

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Sep 07, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

GABRIEL A. ECKARD,

Plaintiff,

v.

C/O 2 RYAN FARREL, C/O 2  
UNKNOWN, RN DEBRA  
UNKNOWN and CUS TANNER  
MINK,

Defendants.

NO: 4:21-CV-05090-RMP

ORDER DENYING LEAVE TO  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING ACTION

On July 27, 2021, the Court directed Plaintiff Gabriel A. Eckard, a *pro se* prisoner at the Washington State Penitentiary, to show cause within thirty (30) days why the Court should grant his application to proceed *in forma pauperis*. ECF No. 11 at 5. In the alternative, Plaintiff could have paid the \$402.00 filing fee. *Id.*

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND  
DISMISSING ACTION -- 1

1 On September 3, 2021, Plaintiff filed a late two-page<sup>1</sup> response. ECF No.  
2 12. After careful review of Plaintiff's submission, the Court finds that Plaintiff has  
3 failed to demonstrate that he was under imminent danger of serious physical injury  
4 when he initiated this case and is thus precluded under 28 U.S.C. § 1915(g) from  
5 proceeding in this action without prepayment of the filing fee. *See O'Neal v.*  
6 *Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).

7 Petitioner contends that "the Ninth Circuit appellate court has not upheld the  
8 'strikes' in any of the cases cited by the court." ECF No. 12 at 1. Plaintiff's  
9 contention is not well taken, especially when the Ninth Circuit Court of Appeals  
10 has also denied Mr. Eckard *in forma pauperis* status pursuant to 28 U.S.C. §  
11 1915(g). *See Eckard v. Cornell*, No. 20-35183, (Apr. 23, 2020) Dkt. No. 4.

12 Plaintiff asserts that he is "not attempting to defeat the strikes by threatening  
13 to harm himself or by harming himself." ECF No. 12 at 1. Rather, he is allegedly  
14 "in danger of harm due to the deliberate indifference of prison employees in  
15 deliberately choosing not to protect him from the effects of his mental illness." *Id.*

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17 <sup>1</sup> To the extent Mr. Eckard wrote on two sides of a page, only one side was  
18 scanned. Prisoner Electronic Filing Guidelines clearly instruct that the scanning  
19 process does not allow two sided paper and only the front side of the paper should  
20 be used.  
21

1 He claims that he “is not receiving medicaly [sic] necessary psychiatric care due to  
2 the over-reaction of prison officials.” *Id.* These conclusory assertions are  
3 insufficient to show that Mr. Eckard was under “imminent danger of serious  
4 physical injury” when he filed his complaint on June 11, 2021. *See* 28 U.S.C. §  
5 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055–56 (9th Cir. 2007); *see also*  
6 *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (“Allegations of past harm do not suffice;  
7 the harm must be imminent or occurring at the time the complaint is filed.”).

8 Liberally construing Plaintiff’s assertions in the light most favorable to him,  
9 the Court finds that he was failed to overcome the preclusive effects of 28 U.S.C. §  
10 1915(g). Because Plaintiff did not avail himself of the opportunity to pay the  
11 \$402.00 filing fee, he may not proceed with this action.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Plaintiff’s application to proceed *in forma pauperis*, **ECF No. 2**, is  
14 **DENIED.**

15 2. This action is **DISMISSED WITHOUT PREJUDICE** for non-  
16 payment of the filing fee as required by 28 U.S.C. § 1914.

17 3. The District Court Clerk shall **CLOSE** the file.

18 4. The Court certifies any appeal of this dismissal would not be taken in  
19 good faith.

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